

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

* * * * *

ANTHONY S. HECIMOVICH,)	
)	
Appellant,)	<u>OSPI</u>
v.)	<u>FINDINGS OF FACT</u>
)	<u>CONCLUSIONS OF LAW & ORDER</u>
TRUSTEES, FLATHEAD COUNTY SCHOOL)	
DISTRICT NO. 44, WHITEFISH,)	OSPI 62-83
MONTANA)	
Respondent.)	

* * * * *

This case was submitted to the State Superintendent of Public Instruction on July 30, 1984. The State Superintendent of Public Instruction, having considered the record and the written briefs submitted, now makes these following:

FINDINGS OF FACT

1. On December 12, 1983, Anthony Hecimovich, hereinafter referred to as "Appellant," by and through his collective bargaining association, the Montana Education Association, and Emilie Loring, Attorney, filed a Notice of Appeal to this State Superintendent.

2. On December 16, 1983, Appellant, by and through his attorney, Emilie Loring, filed an amended Notice of Appeal to this State Superintendent. In such Notice, Appellant contends that he holds a secondary teaching certificate with endorsements in industrial arts, social studies, and a specialist rating in trade. He was hired by Respondent School District No. 44, Flathead County. Appellant taught for 32 years in industrial arts at that school. He never taught social studies for Respondent.

3. In the spring of 1983, Respondent school board notified Appellant that for the 1983-84 school year, Appellant was being assigned to teach two sections of social studies including American government and history in addition to teaching the various industrial arts classes which he had previously taught.

4. On September 8, 1983, Appellant filed an appeal with the Flathead County Superintendent of Schools on the basis that the decision to have him teach social studies was not in conformity with section 20-4-203 of Montana Codes Annotated in that his position for the 1983-84 school year is not the same or comparable position as that which he held during the 1982-83 school year.

5. Respondent moved for dismissal of the case on the grounds that the County Superintendent was without jurisdiction to hear the matter.

6. The County Superintendent ruled against the motion to dismiss and conducted a hearing on this matter on October 14, 1983.

7. Findings of Fact, Conclusions of Law, and an Order were rendered by the County Superintendent of Schools on November 17, 1983, and are herein adopted as the State Superintendent's findings.

8. Appellant is a tenured teacher in Whitefish High School District No. 44. He was employed for 32 years teaching industrial arts.

9. Appellant was certified in the State of Montana with a Class 1 teaching certificate with endorsements in industrial arts and social science.

10. The decision was a result of budgetary reasons and the conclusion not to replace a teacher who was retiring. There was no contest or dispute with regard to the financial decisions of reassignment, only the question of the properness of reassignment.

11. Appellant was notified by proper **school** authorities of the assignment/transfer to American government and history classes as his teaching assignment. This was later confirmed in a meeting on May 3, 1983.

12. The Petitioner taught four sections of industrial arts and supervised study halls with one preparation period per day.

13. The Petitioner has the same building assignment with his new teaching duties.

14. Petitioner taught students in 9th through 12th grades in both the 1982-83 and 1983-84 school years.

15. Petitioner had six student contact hours in 1982-83 and 1983-84.

16. Petitioner's salary has not been decreased from the 1982-83 and 1983-84 school years.

17. The County Superintendent of Schools held that he had jurisdiction on this matter.

18. The reassignment was not in violation of Section 20-4-203 MCA in that the new assignment was proper and comparable.

19. Appellant is competent to teach in these areas of reassignment and there was no evidence to indicate otherwise.

From these Findings of Fact, this State Superintendent now draws these:

CONCLUSIONS OF LAW

1. The State Superintendent of Public Instruction has jurisdiction on this matter pursuant to 20-3-107 MCA.

2. The appeal from the County Superintendent to the State Superintendent of Public Instruction was timely pursuant to Section 20-3-210 MCA.

3. Pursuant to the Montana Supreme Court decision in Massey v. Ed Argenbright, Superintendent of Public Instruction and Trustees of Custer County District High School and Miles City School District No. 1, St. Rptr. Mont. ____, P2d, the Supreme Court has held that experience is not necessary and does not limit "the definition of comparable position" contained in Montana's tenure statute 20-3-204 MCA.

4. It would be inconsistent to adopt the argument asserted by the teacher's attorney in this case because it was exactly the same argument which this Superintendent submitted to the Supreme Court in Massey.

5. Montana's tenure statute does not provide a specific limitation on the definition of "comparable" and thus under the management rights of public employers found in Section 39-31-303 MCA, the transfer/reassignment of this teacher was proper.

6. The decision of the County Superintendent of Schools is consistent in accord with the Montana Supreme Court decision in Massey noted above.

From these Conclusions of Law, this State Superintendent now enters his:

ORDER

From the foregoing Findings of Fact and Conclusions of Law, this State Superintendent now orders:

1. The decision of the County Superintendent of Schools of Flathead County is hereby affirmed.

DATED this _____ day of September, 1984.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

* * * * *

KIM BACON, et al.)	
Appellant)	OSPI 56-83
vs.)	
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW & ORDER
BEAVERHEAD COUNTY TRANS- PORTATION COMMITTEE,)	
Respondent.)	

* * * * *

This matter arose from a decision of the Beaverhead County Transportation Board dated August 19, 1983 which was appealed on September 7, 1983, to this office. The matter being deemed submitted for decision and after careful consideration of the transcript, exhibits and arguments presented by the parties, I now make these:

FINDINGS OF FACT

1. The Appellants clearly established before the county superintendent and other members of the transportation committee that the roads over which they were seeking isolation rate reimbursement are subject to severe weather conditions in an area of the state which historically is subjected to the most severe weather extremes during the winter months.